IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1079 of 2003
and
C.M.P.No.9510 of 2003

Kaliyappan .. Appellant

-Vs-

1. Edumban
2. Elumalai
3. Pandiyan .. Respondents

This second appeal is preferred under Sec.100 of The Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Kulithalai dated 29.1.2003 in A.S.No.266 of 1995 reversing the judgment and decree of the District Munsif, Kulithalai dated 26.4.1994 in O. S.No.21 of 1993.

!For Appellant : Mr.S.Parthasarathy
for M/s.Sarvabhauman
Associates

^For Respondents : ---

:JUDGMENT

At the time of admission of this second appeal, the Court heard the learned Counsel for the appellant.
2. It was a suit filed by the appellant/plaintiff seeking the relief of permanent injunction stating that the suit property exclusively belonged to him; that he has been in lawful possession of the same all along; that his possession was attempted to be interfered with, and hence, his rights are to be protected by way of a permanent injunction. The suit was resisted by the respondents/defendants stating that the property belonged to all the parties; that it was a joint one, and joint patta has also been issued in favour of all, and hence, the case of the plaintiff as to the exclusive title and possession to the property was not correct, and hence, the suit was to be dismissed.
3. The trial Court framed the necessary issues, tried the suit and decreed the suit in favour of the appellant/plaintiff granting the relief as asked for. Aggrieved defendants took it on appeal before the Sub Court, Kulithalai in A.S.No.266 of 1995, and on consideration of the available materials, the learned Subordinate Judge reversed the judgment of the trial

Court and dismissed the suit. Hence, the aggrieved plaintiff has brought forth this second appeal.

4. The Court is of the considered view, on consideration of the submissions made by the learned Counsel for the appellant and scrutiny of the materials available, that no case is made out to admit this second appeal, since the Court is unable to notice any question of law, much less substantial question of law.

5. It was a suit for permanent injunction simplicitor alleging that the suit property exclusively belonged to the appellant/plaintiff in which the respondents/defendants had no interest at all, and they were attempting to interfere with his possession and also causing infringement over his rights. But, the suit was contested by the respondents stating that it was a joint property, and a joint patta has also been issued. Both sides have adduced evidence both oral and documentary, which was considered by the first appellate Court. The learned Subordinate Judge has pointed out that it is true that a patta was relied on by the appellant/plaintiff, but the same was subsequently ordered to be rectified. The learned Subordinate Judge has further added that a joint patta has also been relied on by the defendants, which would indicate that the property belonged to both parties. In such circumstances, the plaintiff was not entitled for a permanent injunction as asked for. On perusal of the impugned judgment, the Court is of the considered opinion that it is not a fit case, where the relief of permanent injunction could be either sought for or granted in favour of the appellant/plaintiff. Thus, the Court does not find any question of law, much less substantial question of law to be formulated for consideration.

6. Both the Courts have gone into the question of possession in order to decide the issue of permanent injunction. Now, at this stage, the learned Counsel for the appellant would submit that under the circumstances, a liberty has got to be given to the appellant/plaintiff' s side to file a sit for declaration in respect of the title of the property, and in that proceedings only, the title could be effectively adjudicated upon. The Court has to agree with the learned Counsel for the appellant.

7. Therefore, this second appeal is dismissed at the admission stage itself. However, the appellant/plaintiff is given a liberty to file a suit for declaration in respect of the title as to the property in question. No costs. Consequently, connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

1) The District Munsif, Kulithalai.
2) The Subordinate Judge, Kulithalai.
nsv/